

TO INCLUDE ALL BANKING AGENCIES WITHIN THE EXISTING REGULATORY AUTHORITY UNDER THE FEDERAL TRADE COMMISSION ACT WITH RESPECT TO DEPOSITORY INSTITUTIONS, AND FOR OTHER PURPOSES

DECEMBER 5, 2007.—Ordered to be printed

Mr. FRANK of Massachusetts, from the Committee on Financial Services, submitted the following

R E P O R T

[To accompany H.R. 3526]

[Including cost estimate of the Congressional Budget Office]

The Committee on Financial Services, to whom was referred the bill (H.R. 3526) to include all banking agencies within the existing regulatory authority under the Federal Trade Commission Act with respect to depository institutions, and for other purposes, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

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PURPOSE AND SUMMARY

H.R. 3526, a bill “To include all banking agencies within the existing regulatory authority under the Federal Trade Commission

Act with respect to depository institutions,” is intended to provide financial consumers with additional regulatory protections against unfair and deceptive trade practices by expanding the range of financial regulators with the authority to promulgate regulations identifying and restricting such practices under the Federal Trade Commission Act (“FTC Act”). H.R. 3526 expands the range of regulators with promulgation authority (currently the Board of Governors of the Federal Reserve, the Office of Thrift Supervision (as successor to the Federal Home Loan Bank Board), and the National Credit Union Administration) to include the other federal bank regulators, namely the Federal Deposit Insurance Corporation and the Office of the Comptroller of the Currency. The legislation also states that regulations promulgated under the relevant section of the FTC Act shall be prescribed “jointly by such agencies to the extent practicable.”

BACKGROUND AND NEED FOR LEGISLATION

The Federal Trade Commission Act gives the Federal Trade Commission the authority to write regulations and take other actions against unfair and deceptive acts and practices in commerce. However, Section 18(f)(1) of that Act provides an exception for federally-regulated financial institutions, giving the authority to write rules identifying and preventing unfair and deceptive acts and practices for banks, savings and loans and Federal credit unions to the Board of Governors of the Federal Reserve, the Federal Home Loan Bank Board (superseded by the Office of Thrift Supervision), and the National Credit Union Administration, respectively.

Since this authority was granted in the 1970s, the three named agencies have used it very sparingly. Despite a statutory requirement (Section 18(f)(1) of the Act) that they “shall prescribe regulations” identifying and preventing such acts and practices, the agencies have issued only a handful of rules, generally only acting following formal rulemakings by the Federal Trade Commission. For example, in 1985 the agencies issued equivalents of the FTC’s Credit Practices Rule following the FTC’s action in 1984. There has been no major rulemaking under this authority since, however. While the statute requires the three banking agencies to act when the FTC does, their authority (and mandate) to issue rules of their own is not dependent upon FTC action.

This lack of clear rules has led to an absence of consumer protections across a broad range of financial products and services. Consumer advocates have identified many financial practices—in areas ranging from checking account overdraft fees to “universal default” credit card interest rate increases—that can disadvantage consumers, yet few of these have been addressed by an open, transparent regulatory process. Regulators have claimed that their private examination procedures and enforcement actions are designed to address many unfair and deceptive practices, but neither the Committee nor the public has the ability to evaluate the effectiveness of these processes—they are by nature closed to public scrutiny. In addition, such non-public enforcement, unlike a standard rulemaking, provides no guidance either to other institutions or to consumers about which practices are unfair or deceptive.

In a July 25, 2007 Financial Services Committee hearing, consumer witnesses argued that consumers and financial institutions

alike would benefit substantially from transparent, clear rules and enforcement. In a June 13, 2007 hearing, the Comptroller of the Currency and the Chairman of the FDIC, two agencies that have taken independent enforcement actions against unfair and deceptive practices but do not have rulewriting authority under the FTC Act, recommended that the Committee make these changes. FDIC Chairman Sheila Bair's testimony stated:

In order to further strengthen the use of the FTC Act's rulemaking provisions, the FDIC recommends that Congress consider granting Section 5 rulemaking authority to all federal banking regulators. By limiting FTC rulemaking authority to the FRB, OTS and NCUA, current law excludes participation by the primary federal supervisors of about 7,000 banks. Including the perspectives of the supervisor of some of the nation's largest banks and the perspectives of the supervisor of the largest number of banks, as well as the deposit insurer, would provide valuable input and expertise to the rulemaking process. As a practical matter, these rulemakings would be done on an interagency basis and would benefit from the input of all interested parties.

Comptroller John Dugan's testimony stated:

* * * [T]he OCC would support the extension of FTC Act rulemaking authority to all of the federal banking agencies, so that we could, as necessary, write joint rules that define unfair or deceptive practices and establish requirements that are designed to prevent such acts or practices. Such authority would be helpful to establish across-the-board rules to prohibit especially egregious practices.

HEARINGS

The Committee on Financial Services held a hearing on June 13, 2007, entitled "Improving Federal Consumer Protection in Financial Services". The following witnesses testified:

- The Honorable Randall S. Kroszner, Governor, Federal Reserve Board
- The Honorable John C. Dugan, Comptroller of the Currency, Office of the Comptroller of the Currency
- The Honorable Sheila C. Bair, Chairman, Federal Deposit Insurance Corporation
 - The Honorable Deborah Platt Majoras, Chairman, Federal Trade Commission
 - Mr. Scott M. Polakoff, Deputy Director and Chief Operating Officer, Office of Thrift Supervision
 - The Honorable Tom Miller, Attorney General, State of Iowa
 - Mr. Steven L. Antonakes, Commissioner of Banks, Commonwealth of Massachusetts, on behalf of the Conference of State Bank Supervisors

The Committee on Financial Services held a hearing on July 25, 2007 entitled "Improving Federal Consumer Protection in Financial Services-Consumer and Industry Perspectives". The following witnesses testified:

- Mr. Travis Plunkett, Legislative Director, Consumer Federation of America
- Mr. Raul Gonzalez, Legislative Director, National Council of La Raza
- Mr. George Gaberlavage, Director, Policy Research & Development, Consumer and State Affairs, Public Policy Institute, AARP
- Mr. Arthur Johnson, Vice President, American Bankers Association, Chairman and Chief Executive Officer of United Bank of Michigan
- Mr. Jim Sivon, Partner, Barnett, Sivon & Natter PC

COMMITTEE CONSIDERATION

The Committee on Financial Services met in open session on September 18, 2007, and ordered H.R. 3526, to include all banking agencies within the existing regulatory authority under the Federal Trade Commission Act with respect to depository institutions, and for other purposes, favorably reported to the House by a voice vote.

COMMITTEE VOTES

Clause 3(b) of rule XIII of the Rules of the House of Representatives requires the Committee to list the record votes on the motion to report legislation and amendments thereto. No record votes were taken in conjunction with the consideration of this legislation. A motion by Mr. Frank to order the bill reported to the House with a favorable recommendation was agreed to by a voice vote.

COMMITTEE OVERSIGHT FINDINGS

Pursuant to clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee has held hearings and made findings that are reflected in this report.

PERFORMANCE GOALS AND OBJECTIVES

Pursuant to clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, the Committee establishes the following performance related goals and objectives for this legislation:

H.R. 3526 is intended to provide financial consumers with additional regulatory protections against unfair and deceptive trade practices by expanding the range of financial regulators with the authority to promulgate regulations identifying and restricting such practices under the Federal Trade Commission Act (“FTC Act”).

NEW BUDGET AUTHORITY, ENTITLEMENT AUTHORITY, AND TAX EXPENDITURES

In compliance with clause 3(c)(2) of rule XIII of the Rules of the House of Representatives, the Committee adopts as its own the estimate of new budget authority, entitlement authority, or tax expenditures or revenues contained in the cost estimate prepared by the Director of the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974.

COMMITTEE COST ESTIMATE

The Committee adopts as its own the cost estimate prepared by the Director of the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974.

CONGRESSIONAL BUDGET OFFICE ESTIMATE

Pursuant to clause 3(c)(3) of rule XIII of the Rules of the House of Representatives, the following is the cost estimate provided by the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974:

OCTOBER 3, 2007.

Hon. BARNEY FRANK,
Chairman, Committee on Financial Services,
House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 3526, a bill to include all banking agencies within the existing regulatory authority under the Federal Trade Commission Act with respect to depository institutions, and for other purposes.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Kathleen Gramp.

Sincerely,

PETER R. ORSZAG.

Enclosure.

H.R. 3526—A bill to include all banking agencies within the existing regulatory authority under the Federal Trade Commission Act with respect to depository institutions, and for other purposes

H.R. 3526 would increase the number of federal agencies authorized to issue regulations regarding unfair and deceptive financial practices under the Federal Trade Commission Act. Enacting this bill would allow the Federal Deposit Insurance Corporation (FDIC) and the Office of the Comptroller of the Currency (OCC) to issue such rules for institutions under their jurisdiction. Under current law, such rules may only be issued by the Board of Governors of the Federal Reserve, the National Credit Union Administration, and the Federal Home Loan Bank Board.

Based on information from the affected agencies, CBO expects that developing and implementing regulations would result in direct spending of less than \$500,000 a year. Any additional direct spending by the OCC would be offset by income from annual fees. Similarly, the FDIC would recover any added costs when it adjusts the insurance premiums paid by insured depository institutions. Thus, CBO estimates that enacting this bill would have no significant impact on net direct spending and would have no effect on revenues.

H.R. 3526 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act and would not directly affect the budgets of state, local, or tribal governments.

The CBO staff contact for this estimate is Kathleen Gramp. This estimate was approved by Theresa A. Gullo, Deputy Assistant Director for Budget Analysis.

FEDERAL MANDATES STATEMENT

The Committee adopts as its own the estimate of Federal mandates prepared by the Director of the Congressional Budget Office pursuant to section 423 of the Unfunded Mandates Reform Act.

ADVISORY COMMITTEE STATEMENT

No advisory committees within the meaning of section 5(b) of the Federal Advisory Committee Act were created by this legislation.

CONSTITUTIONAL AUTHORITY STATEMENT

Pursuant to clause 3(d)(1) of rule XIII of the Rules of the House of Representatives, the Committee finds that the Constitutional Authority of Congress to enact this legislation is provided by Article 1, section 8, clause 1 (relating to the general welfare of the United States) and clause 3 (relating to the power to regulate interstate commerce).

APPLICABILITY TO LEGISLATIVE BRANCH

The Committee finds that the legislation does not relate to the terms and conditions of employment or access to public services or accommodations within the meaning of section 102(b)(3) of the Congressional Accountability Act.

EARMARK IDENTIFICATION

H.R. 3526 does not contain any congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9 of rule XXI.

SECTION-BY-SECTION ANALYSIS OF THE LEGISLATION

Section 1(a)(1) of the bill alters the authority to promulgate unfair and deceptive practices rules for federally regulated financial institutions under FTC Act. Existing authority is granted to the Federal Reserve, the OTS (succeeding the Federal Home Loan Bank Board) and the NCUA. Under the legislation, each “federal banking agency” and the NCUA will have the FTC Act authority and mandate to write rules to identify and prevent unfair and deceptive practices “with respect to depository institutions” they oversee.

Section 1(a)(2) states that regulations under this section shall be prescribed “jointly by such agencies to the extent practicable.” The Committee intends that regulations promulgated pursuant to this section shall be promulgated jointly through the Federal Financial Institutions Examination Council to the extent practicable.

Section 2 of the bill makes technical and conforming amendments to the Federal Trade Commission Act to effect the purposes of the legislation.

Nothing in this legislation is intended to affect the scope of the authority granted to the financial regulators under the FTC Act, nor is the bill intended to affect in any way the authority of the FTC. Nothing in the legislation is intended to affect the applicability of state unfair and deceptive practices laws to federally chartered institutions.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

FEDERAL TRADE COMMISSION ACT

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SEC. 18. (a) * * *

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(f)(1) In order to prevent unfair or deceptive acts or practices in or affecting commerce (including acts or practices which are unfair or deceptive to consumers) by [banks or savings and loan institutions described in paragraph (3), each agency specified in paragraph (2) or (3)] *depository institutions, the Federal banking agencies and the National Credit Union Administration Board* of this subsection shall establish a separate division of consumer affairs which shall receive and take appropriate action upon complaints with respect to such acts or practices by banks or savings and loan institutions described in paragraph (3), subject to its jurisdiction. [The Board of Governors of the Federal Reserve System (with respect to banks) and the Federal Home Loan Bank Board (with respect to savings and loan institutions described in paragraph (3))] *Each Federal banking agency (with respect to depository institutions) and the National Credit Union Administration Board (with respect to Federal credit unions described in paragraph (4)) shall prescribe regulations, which shall be prescribed jointly by such agencies to the extent practicable, to carry out the purposes of this section, including regulations defining with specificity such unfair or deceptive acts or practices, and containing requirements prescribed for the purpose of preventing such acts or practices. Whenever the Commission prescribes a rule under subsection (a)(1)(B) of this section, then within 60 days after such rule takes effect [each such Board] each such banking agency and the National Credit Union Administration Board shall promulgate substantially similar regulations prohibiting acts or practices of [banks or savings and loan institutions described in paragraph (3)] depository institutions, or Federal credit unions described in paragraph (4), as the case may be, which are substantially similar to those prohibited by rules of the Commission and which impose substantially similar requirements, unless (A) any such Board finds that such acts or practices of [banks or savings and loan institutions described in paragraph (3)] depository institutions, as the case may be, are not unfair or deceptive, or (B) the Board of Governors of the Federal Reserve System finds that implementation of similar regulations [with respect to banks, savings and loan institutions] with respect to depository institutions or Federal credit unions would seriously conflict with essential monetary and payments systems policies of such Board, and publishes any such finding and the reasons therefor, in the Federal Register. For purposes of this subsection, the terms "Federal banking agency" and "depository institution" have*

the same meaning as in section 3 of the Federal Deposit Insurance Act.

* * * * *

(3) Compliance with regulations prescribed under this subsection shall be enforced under section 8 of the Federal Deposit Insurance Act with respect to savings associations as defined in section 3 of the Federal Deposit Insurance Act *by the Director of the Office of Thrift Supervision.*

(4) Compliance with regulations prescribed under this subsection shall be enforced with respect to Federal credit unions under sections 120 and 206 of the Federal Credit Union Act (12 U.S.C. 1766 and 1786) *by the National Credit Union Administration.*

* * * * *

(6) The authority of **the Board of Governors of the Federal Reserve System** *any Federal banking agency or the National Credit Union Administration Board* to issue regulations under this subsection does not impair the authority of any other agency designated in this subsection to make rules respecting its own procedures in enforcing compliance with regulations prescribed under this subsection.

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